

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Community Affairs Committee

BILL: CS/SB 160

INTRODUCER: Criminal Justice Committee and Senator Ring

SUBJECT: Sports Coaches/Criminal History Screening

DATE: February 24, 2009

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Wolfgang</u>	<u>Yeatman</u>	<u>CA</u>	<u>Favorable</u>
3.	_____	_____	<u>JU</u>	_____
4.	_____	_____	<u>JA</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The bill requires the sanctioning authority of an independent youth athletic team (the team must be based in this state) to screen a person in this state who applies to be a sports coach of such team prior to hiring the person as a sports coach. The screening consists of a search of the state and national sex offender registries. The sanctioning authority must disqualify any sports coach appearing in either registry.

The sanctioning authority must provide written notification to the sports coach of his or her right to obtain a copy of the screening. A disqualified sports coach may appeal to the sanctioning authority the accuracy and completeness of the screening report. Unless prohibited by state or federal law, a sports coach may be placed on probationary status pending resolution of the appeal. The sanctioning authority is required to sign an affidavit annually, under penalty of perjury, stating that all sports coaches who have applied for a position as a sports coach of an independent youth athletic team under its jurisdiction have been screened in compliance with the screening requirements of the bill.

The bill further provides that in any civil action brought against a sanctioning authority for which it is alleged that the sanctioning authority was negligent in the hiring of a sports coach because of

sexual misconduct committed by the sports coach, a rebuttable presumption is created that the independent youth athletic team was not negligent in hiring the sports coach if the sanctioning authority conducted a screening of the sports coach by participating in the Volunteer and Employee Criminal History System (VECHS) of the Florida Department of Law Enforcement and made a reasonable effort to contact references. In this same type of civil action, if the VECHS and reference checks are not conducted by the sanctioning authority, a rebuttable presumption is created that the sanctioning authority was negligent in the hiring of the sports coach.

The bill also encourages sanctioning authorities to participate in the VECHS program.

The bill creates new and presently unnumbered sections of the Florida Statutes.

II. Present Situation:

The definition of “independent youth athletic team” appears to encompass national (non-school) youth sports organizations such as Little League Baseball and Pop Warner, though the bill could also encompass non-school youth sports organizations that operate only in this state or only in a particular locality in this state.

According to information staff received from the Florida Department of Law Enforcement (FDLE), there is currently no Florida law that requires sports coaches for these independent youth athletic teams to be screened against state or national sex offender registries.

Section 943.04351, F.S., provides that a state agency or governmental subdivision, prior to making any decision to appoint or employ a person to work, whether for compensation or as a volunteer, at any park, playground, day care center, or other place where children regularly congregate, must conduct a search of that person’s name or other identifying information against the registration information regarding sexual predators and sexual offenders maintained by the FDLE. The screening requirements of the bill are similar to the screening requirements of s. 943.04351, F.S., insofar as requiring a search of the state sex offender registry, but different in requiring both a state and national sex offender registry search.

Section 775.21(10)(b), F.S., provides that it is a third degree felony for a registered sexual predator who has been convicted of or found to have committed, or has pled nolo contendere or guilty to, regardless of adjudication, any sexual offense specified in that paragraph to work, whether for compensation or as a volunteer, at any business, school, daycare center, park, playground, or other place where children regularly congregate. Notwithstanding the bill, it appears that a person would be precluded from acting as a sports coach of an independent youth athletic team (at least to the extent of contact with children), if the person is a registered sexual predator as described in s. 775.21(10)(b), F.S.

Pertinent to the bill, the FDLE has described the Volunteer and Employee Criminal History System (VECHS) as follows:

Through the VECHS program, FDLE and the Federal Bureau of Investigation (FBI) provide to qualified organizations (not individuals) in Florida state and national criminal

history record information on applicants, employees, and volunteers. With this criminal history information, the organizations can more effectively screen out those current and prospective volunteers and employees who are not suitable for contact with children, the elderly, or the disabled.

Generally, to be qualified to participate in the VECHS program, an organization (public, private, profit, or non-profit) must provide “care”¹ or “care placement services” ... to children, the elderly, or the disabled.

The VECHS program is not available to organizations currently required to obtain criminal history record checks on their employees and/or volunteers under other statutory provisions, such as day care centers. Those organizations must continue to follow the statutory mandates that specifically apply to them. If, however, an organization is required to obtain state and national checks on only specific types of employees or volunteers, the VECHS program may be able to process requests for state and national checks on the organization’s other employees or volunteers.

To become a qualified organization and to obtain criminal history record information through the VECHS program at FDLE, an organization will need to do the following:

- Submit an application to FDLE explaining what functions the organization performs that serve children, elderly, or disabled persons;
- Sign an agreement that the criminal history information would be used only to screen employees and volunteers of that organization for employment purposes;
- Submit \$54.25 for each employee or \$33.25 for each volunteer fingerprint card submission; and
- Submit \$43.25 for each employee or \$33.25 for each volunteer electronic submission.

If an organization becomes qualified and provides the required information for criminal history record requests, FDLE, with the assistance of the FBI, will provide the organization with the following:

- An indication that the person has no criminal history, i.e., no serious arrests in state or national databases, if there are none;
- The criminal history record (RAP sheet) that shows arrests and/or convictions for Florida and other states, if any; and
- Notification of any warrants or domestic violence injunctions that the person may have.²

III. Effect of Proposed Changes:

The bill creates new and presently unnumbered sections of the Florida Statutes. Section 1 of the

¹ The word “care” is defined in 943.0542, F.S. (access to criminal history information provided by FDLE to qualified entities) to include the provision of recreation to children.

² <http://www.fdle.state.fl.us/content/getdoc/9023f5ac-2c0c-465c-995c-f949db57d0dd/VECHS.aspx>

bill does the following:

- Requires the sanctioning authority of an independent youth athletic team³ (the team must be based in this state) to screen a person in this state who applies to be a sports coach⁴ of such team prior to hiring the person as a sports coach. The screening consists of a search of the sexual offenders and predators public website of the Florida Department of Law Enforcement and the Dru Sjodin National Sex Offender Public Website of the United States Department of Justice.
- Requires the sanctioning authority to disqualify any sports coach appearing in either registry. It is the sports coach's appearance in the state or national sex offender registry, rather than a conviction for any particular sexual offense, that disqualifies him or her as a sports coach.
- Requires the sanctioning authority to provide written notification to the sports coach of his or her right to obtain a copy of the screening.
- Authorizes a disqualified sports coach to appeal to the sanctioning authority the accuracy and completeness of the screening report.
- Unless prohibited by state or federal law, authorizes the sanctioning authority to place the sports coach on probationary status pending resolution of the appeal.
- Requires the sanctioning authority to sign an affidavit annually, under penalty of perjury, stating that all sports coaches who have applied for a position as a sports coach of an independent youth athletic team under its jurisdiction have been screened in compliance with the screening requirements of the bill.
- Provides that in any civil action brought against a sanctioning authority for which it is alleged that the sanctioning authority was negligent in the hiring of a sports coach because of sexual misconduct committed by the sports coach, a rebuttable presumption is created that the independent youth athletic team was not negligent in hiring the sports coach if the sanctioning authority conducted a screening of the sports coach by participating in the Volunteer and Employee Criminal History System (VECHS) of the Florida Department of Law Enforcement and made a reasonable effort to contact references.

³ The bill specifies that the "sanctioning authority of an independent youth athletic team" includes the independent organization with authority to sanction an independent youth athletic team, any local office of that organization, and any office or entity that is authorized by that organization to perform any of its functions or represent its interests. The bill defines "independent youth athletic team" as an athletic team in this state that: 1) includes a minor as a team member; 2) is sanctioned by an independent organization; and 3) is not sanctioned by or affiliated with a public or private school. The bill defines "minor" by cross-reference to the definition of that term in s. 1.01, F.S. Section 1.01(13), F.S., specifies that the word "minor" includes any person who has not attained the age of 18 years.

⁴ The bill defines "sports coach" as a person who is authorized by a sanctioning authority to be responsible for leading an independent youth athletic team and any person assisting the sports coach. Further, a "sports coach" is an individual who: 1) works or is to work for the independent youth athletic team 20 or more hours within a calendar year; 2) has or is to have unsupervised contact with minors; and 3) serves or is to serve as a chaperone for minors on any overnight activity related to the independent youth athletic team.

- Provides that in this same type of civil action, if the VECHS and reference checks are not conducted by the sanctioning authority, a rebuttable presumption is created that the sanctioning authority was negligent in the hiring of the sports coach.

Section 2 of the bill contains a statement that the Legislature encourages sanctioning authorities for youth athletic teams to participate in the VECHS program.

Section 3 of the bill provides that the effective date of the bill is July 1, 2009.

Other Potential Implications:

Pursuant to s. 943.0435(1)(a)1.b., F.S., a person is required to register as a sexual offender in this state if he or she establishes or maintains a residence in this state and was or would be required to register as a sexual offender, sexual predator, or other similar designation in another state. The basis for this registration requirement is not the offense but the person's status as a resident of this state and as a person required to register in another state. What this means is that this person's offense may or may not be similar to a Florida offense that would require registration or may be similar to a Florida offense that does not require registration. Therefore, it is possible that sports coaches with similar criminal histories could be treated differently depending on the offense committed and where it was committed.

Offenses requiring registration are almost exclusively sexual offenses, but not all qualifying sexual offenses involve a victim who is a minor. Further, there are numerous violent offenses committed upon minors that are not sexual offenses. Also, registration laws do not necessarily require that every person convicted of a sexual offense be registered. For example, while Florida's registry laws contain an extensive list of sexual offenses, those laws do not reach back to require registration of every living person who was convicted of a listed Florida sexual offense. Also, a person may have been charged with a sexual offense but ultimately been convicted of a non-sexual offense like battery. This battery offense would not qualify the person for registration.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The sex offender registry screening requirements of the bill should have a nominal impact on the sanctioning authorities. The state and national registries are public websites that can be accessed by persons with minimal computer skills and searches can be conducted relatively quickly.

Screening through the VECHS program does require payment of a fee (see discussion in “Present Situation” section of this analysis). The bill does not require sanctioning authorities to do a VECHS search of a sports coach of an independent youth athletic team, but not doing so could give rise to a rebuttable presumption of non-negligent hiring (as described in the bill).

C. Government Sector Impact:

The Criminal Justice Impact Conference has determined that this bill is expected to have an insignificant prison bed impact.

The bill requires that the sanctioning authority sign an affidavit annually, under penalty of perjury, stating that all sports coaches under its jurisdiction have been screened or are newly hired and awaiting screening. Perjury by false written declaration is a third degree felony.⁵ However, this perjury is a Level 1 offense (*see* s. 921.0023, F.S.) and a first-time offender convicted of only this offense may score a non-prison sanction as the lowest permissible sentence the court may impose or a five year sentence as the highest permissible sentence. Note, however, that the sanctioning authority is defined as an organization, office, or entity, which makes a nonprison sentence more likely than if the statute was directed against an individual.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

⁵ s. 92.525, F.S.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Criminal Justice on February 18, 2009:**

- Requires the sanctioning authority of an independent youth athletic team (the team must be based in this state) to screen a person in this state who applies to be a sports coach of such team prior to hiring the person as a sports coach. The screening consists of a search of the sexual offenders and predators public website of the Florida Department of Law Enforcement and the Dru Sjodin National Sex Offender Public Website of the United States Department of Justice.
- Provides that in any civil action brought against a sanctioning authority for which it is alleged that the sanctioning authority was negligent in the hiring of a sports coach because of sexual misconduct committed by the sports coach, a rebuttable presumption is created that the independent youth athletic team was not negligent in hiring the sports coach if the sanctioning authority conducted a screening of the sports coach by participating in the Volunteer and Employee Criminal History System (VECHS) of the Florida Department of Law Enforcement and made a reasonable effort to contact references.
- Provides that in this same type of civil action, if the VECHS and reference checks are not conducted by the sanctioning authority, a rebuttable presumption is created that the sanctioning authority was negligent in the hiring of the sports coach.

B. Amendments:

None.